

GENERAL SERVICES ADMINISTRATION

OFFICE OF ACQUISITION POLICY

COMMERCIAL ITEMS CLAUSE USAGE

NOTE: THIS DOCUMENT IS A WORK IN PROCESS. IT IS AN INITIAL ATTEMPT TO IDENTIFY CONTRACT CLAUSES WHICH MAY OR MAY NOT BE USED IN COMMERCIAL ITEM ACQUISITIONS. CHANGES TO THIS LISTING SHOULD BE EXPECTED.*

The attached listing of GSAR clauses indicates which clauses may not ("no") or may ("YES") be used in acquisitions for commercial items. The listing applies to clauses in effect through GSAR Change 65. Note that this listing does NOT require inclusion of clauses, but merely provides that certain clauses MAY be used if they are appropriate. For use of a clause coded "CO" the contracting officer either must determine that the use of the clause is a commercial practice for the items being acquired, or obtain a waiver for use of the clause.

Legend:

IBR:	Incorporated by reference
C:	Consistent with commercial practices
S:	Required by Statute
A:	Agency policy to use clause
CO:	May be used at contracting officer's discretion when appropriate

Assumptions:

Construction contracts will not fall within the definition of "commercial item" and will continue to be acquired under Part 536.

A/E service contract will not fall within the definition of "commercial item" and will continue to be acquired under Part 536.

Utility services are generally not available competitively and will not fall within the definition of "commercial item."

Cite	Title	Use for Comm Items	Basis for "yes"	Additional Information
552.203-4	Contingent Fee Representation and Agreement	no		
552.203-5	Convenant Against contingent Fees	no		
552.203-70	Restriction on Advertising	YES	A	
552.203-71	Prohibited Conduct	no		
552.203-72	Requirement for Certificate of Procurement Integrity	no		
552.203-73	Price Adjustment for Illegal or Improper Activity	no		
552.209-73	Product Removal From Qualified Products List	YES	CO	
552.209-74	Waiver of First Article Testing and Approval Requirement	YES	CO	
552.209-75	Supplemental Requirements For First Article Approval—Contractor Testing	YES	CO	
552.209-76	Supplemental Requirements For First Article Approval—Government Testing	YES	CO	
552.210-70	Standard Reference	no		
552.210-71	References to Specifications in Drawings	YES	CO	
552.210-72	Acceptable Age of Supplies	YES	C	
552.210-73	Age on Delivery	YES	C	
552.210-74	Brand Name or Equal	YES	C	
552.210-75	Marking	YES	A	
552.210-76	Charges for Marking	YES	A	
552.210-77	Preservation, Packaging, and Packing	YES	C	
552.210-78	Charges for Packaging and Packing	YES	C	
552.210-79	Packing List	YES	C	
552.211-70	Commercial Item Certification	no		Clause being deleted from GSAR
552.212-1	Time of Delivery	YES	C	
552.212-70	Time of Shipment	YES	C	
552.212-71	Notice of Shipment	YES	C	
552.212-72	Availability for Inspection, Testing, and Shipment/Delivery	YES	A	
552.212-74	Non-compliance with Contract Requirements	no		
552.214-16	Minimum Bid Acceptance Period	YES	C	
552.214-73	"All or None" Offers	YES	C	
552.214-74	Solicitation Copies			
552.214-75	Progressive Awards and Monthly Quantity Allocations	YES	CO	
552.214-76	Bid Sample Requirements	YES	C	
552.215-70	Examination of Records by GSA	no		Covered by 52.212-5(d)(2)
552.215-73	Preparation of Offers - Construction	no		
552.215-74	Contract Award - Negotiated Construction	no		
552.216-71	Economic Price Adjustment—FSS Multiple Award Schedule Contracts	YES	C	

552.216-72	Economic Price Adjustment—Stock and Special Order Program Contracts	YES	C	
552.216-73	Placement of Orders	YES	A	
552.216-74	Ordering Information	YES	A	
552.217-70	Evaluation of Options	YES	A	
552.217-71	Notice Regarding Options	YES	C	
52.219-9	Small Business Subcontracting Plan	no		Clause being deleted from GSAR
52.219-16	Liquidated Damages—Small Business Subcontracting Plan	no		Clause being deleted from GSAR
552.219-71	Allocation of Orders—Partially Set-Aside Items	YES	A	
552.219-72	Notice to Offerors of Subcontracting Plan Requirements	YES	A	
552.219-73	Preparation, Submission, and Negotiation of Subcontracting Plans	no		
552.219-74	Goals for Subcontracting Plan	YES	A	
552.223-70	Hazardous Substances	YES	S	
552.223-71	Hazardous Material Information	YES	S	
552.223-72	Nonconforming Hazardous Materials	YES	S	
552.225-8	Trade Agreements Act Certificate	no		
552.225-9	Trade Agreements Act	*	IBR	GSA Devistion to FAR
552.225-70	Buy American Act—Hand or Measuring Tools or Stainless Steel Flatware	YES	S	
552.225-71	Notice of Procurement Restriction—Hand or Measuring Tools or Stainless Steel Flatware	YES	S	
552.225-72	Eligible Products From Nondesignated Countries—Waiver	YES	A	
552.225--75	Buy American Act Notice - Construction Materials	no		
552.227-70	Government Rights (Unlimited)	no		
552.227-71	Drawings and Other Data to Become Property of Government	no		
552.228-70	Bid Guarantee and Bonds	no		
552.228-71	Bid Guarantee	no		
552.228-72	Performance Bond	no		
552.228-73	Performance and Payment Bond	no		
552.228-75	Workmen's Compensation Laws	YES	A	
552.229-70	Federal, State, and Local Taxes	YES	A	
552.229-72	Federal Excise Tax - DC Government	no		
552.232-8	Discounts for Prompt Payment	YES	C	
552.232-23	Assignment of Claims	YES	A	
552.232-70	Payments by Electronic Funds Transfer	YES	A	
552.232-71	Prompt Payment	no		
552.232-72	Invoice Requirements	no		
552.232-73	Electronic Funds Transfer Payment	no		
552.232-77	Availability of Funds	YES	A	
552.232-78	Adjusting Payments	YES	A	
552.232-79	Final Payment	YES	A	
552.232-80	Payment by Credit Card	YES	C	
552.233-70	Disputes (Utility Contract)	no		

552.236-70	Definitions	no		
552.236-71	Authorities and Limitations	no		
552.236-72	Specialist	no		
552.236-73	Basis of Award--Construction Contract	no		
552.236-74	Working Hours	no		
552.236-75	Use of Premises	no		
552.236-76	Measurements	no		
552.236-77	Specifications and Drawings	no		
552.236-78	Shop Drawings, Coordination Drawings, and Schedules	no		
552.236-79	Samples	no		
552.236-80	Heat	no		
552.236-81	Use of Equipment by the Government	no		
552.236-82	Subcontracts	no		
552.236-83	Furnishing Information and Records	no		
552.237-70	Qualifications of Offerors	YES	A	
552.237-71	Qualifications of Employees	YES	A	
552.237-72	Certification Regarding "Quasi-Military Armed Forces"	YES	S	
552.238-70	Identification of Electronic Office Equipment Providing Accessibility for the Handicapped	YES	S	
552.238-72	Contractor's Report of Orders Received	YES	A	
552.238-74	Submission and Distribution of Authorized GSA Schedule Pricelist.	YES	A	
552.238-75	Identification of Energy-Efficient Office Equipment and Supplies Containing Recovered Materials or Other Environmental Attributes	YES	S	
552.238-76	Price Reductions	YES	A	
552.238-77	Industrial Funding Fee	YES	S	
552.242-70	Status Report of Orders and Shipments	YES	A	
552.243-70	Pricing of Adjustments	no		
552.243-71	Equitable Adjustments	no		
552.246-17	Warranty of Supplies of a Noncomplex Nature	YES	CO	
552.246-70	Source Inspection by Quality Approved Manufacturer	YES	CO	
552.246-71	Final Inspection and Tests	YES	CO	
552.246-72	Source Inspection by Government	YES	CO	
552.246-73	Warranty Multiple Award Schedule	YES	CO	
552.246-74	Warranty - International Multiple Award Schedule	YES	CO	
552.246-75	Guarantees	no		
552.246-76	Warranty of Pesticides	YES	A	
552.247-70	Placarding Railcar Shipments	YES	C	
552.249-70	Termination for Convenience of the Government (Fixed Price) (Short Form)	no		
552.249-71	Submission of Termination Liability Schedule	no		
552.252-5	Authorized Deviations or Variations in Provisions	no		
552.252-6	Authorized Deviations or Variations in Clauses	no		

552-253-70	Forms Containing Solicitation Provisions and/or Contract Clauses Incorporated by Reference	no		
552.270-1	Preparation of Offers	no		
552.270-2	Explanation to Prospective Offerors	no		
552.270-3	Late Submissions, Modifications, and Withdrawals of Offers	no		
552.270-4	Historic Preference	no		
552.270-5	Lease Award	no		
552.270-6	Parties to Execute Lease	no		
552.270-10	Definitions	no		
552.270-11	Subletting and Assignment	no		
552.270-12	Maintenance of Building and Premises—Right of Entry	no		
552.270-13	Fire and Casualty Damage	no		
552.270-15	Compliance with Applicable Law	no		
552.270-16	Inspection— Right of Entry	no		
552.270-17	Failure in Performance	no		
552.270-18	Successors Bound	no		
552.270-19	Alterations	no		
552.270-20	Proposals for Adjustment	no		
552.270-21	Changes	no		
552.270-22	Liquidated Damages	no		
552.270-25	Adjustment for Vacant Premises	no		
552.270-27	Delivery and Condition	no		
552.270-28	Default in Delivery-Time Extensions	no		
552.270-30	Progressive Occupancy	no		
552.270-31	Measurement for Payment	no		
552.270-32	Effect of Acceptance and Occupancy	no		
552.270-33	Default by Lessor During the Term	no		
552.270-34	Subordination, Nondisturbance Attornment	no		
552.270-35	Statement of Lease	no		
552.270-36	Substitution of Tenant Agency	no		
552.270-37	No Waiver	no		
552.270-38	Integrated Agreement	no		
552.270-39	Mutuality of Obligation	no		
552.270-40	Asbestos and Hazardous Waste Management	no		
552.270-41	Acceptance of Space	no		